IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 3779 of 2007(Y)

PETITIONER:

BABU JOHN, AGED 56 YEARS,
S/O. JOHN, PALATHUMPATTU, CHENGANNUR.

BY ADV. SRI.P.HARIDAS

RESPONDENTS:

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1. ADDITIONAL CHIEF SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT (SPECIAL CELL), SECRETARIAT,
THIRUVANANTHAPURAM.

2. TAHSILDAR, THIRUVALLA.

BY ADVOCATE GOVT. PLEADER SRI.MOHAMMED REFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.3779 of 2007

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Dated this the 31st day of January, 2008.

JUDGMENT

One N.K.Mathew availed a loan from the first respondent. He thereafter died. The Bank had an equitable mortgage in its favour. It filed an application for recovery invoking the provisions of the Recovery of Debts due to Banks and Financial Institutions Act. The Debts Recovery Tribunal issued a recovery certificate. Even before the Original Application was filed, N.K.Mathew died. The application of the Bank for recovery was filed impleading his children.

2. It appears that late Mathew had also another son by name Rajesh, since deceased. The writ petitioner, his wife, filed an application before the Recovery Officer pleading that she and her children are entitled to a share in the

property and have not been heard in the Original Application. The Recovery Officer dismissed the said application.

3. According to the petitioner, since the Presiding Officer of the Debts Recovery Tribunal is on leave, her appeal is not likely to be entertained and therefore the visitorial jurisdiction of this Court is to be extended to suspend the recovery proceedings till the appeal is entertained.

4. Having heard the learned counsel for the parties on the merits of the claim, I am satisfied that the recovery certificate was obtained with the estate of late Mathew being substantially represented. Not only that, a sharer to the hypotheca, on the mere ground of non-impleadment in the original proceedings, is not entitled to file a claim petition. I am, therefore, not inclined to

pass any orders in favour of the writ petitioner. Writ petition fails. It is hence dismissed.

Thottathil B.Radhakrishnan,
Judge.

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